

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 EASTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 4:20-cr-115-FL-1
 5 Plaintiff, - New Bern, North Carolina
 6 v. - April 4, 2022
 7 PATRICK FEDAK, - Pretrial Conference
 8 Defendant. -

9
 10 TRANSCRIPT OF PRETRIAL CONFERENCE
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
 12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

14 For the Plaintiffs: United States Attorneys' Office
 15 By: Barbara D. Kocher
 16 150 Fayetteville Street, Suite 2100
 17 Raleigh, NC 27601
 18 (919) 856-4500

19 For the Defendant: Federal Public Defender
 20 By: Lauren Harrell Brennan
 21 150 Fayetteville St., Suite 450
 22 Raleigh, NC 27611-5967
 23 (919) 856-4236

24 Court Reporter: Tracy L. McGurk, RMR, CRR
 25 413 Middle St.
 New Bern, NC 28560
 (419) 392-6626

Proceedings recorded by mechanical stenography,
 transcript produced by notereading.

1 (Commenced at 9:43 a.m.)

2 THE COURT: Good morning. Mr. Fedak, this
00:20:00 3 case comes before the Court again for what's called a
00:20:03 4 pretrial conference, and this seemed the appropriate
00:20:08 5 vehicle to bring the parties back together today. It
00:20:11 6 gives the Court the opportunity to reflect on your
00:20:14 7 performance under supervision of the United States
00:20:17 8 Probation Office, and it gives the Court the opportunity
00:20:23 9 to reflect on what the needs of the case are and
00:20:25 10 establish an appropriate schedule going forward.

00:20:29 11 We have, of course, this new charge:
00:20:30 12 Obstruction. And I'm prepared, if it is the defendant's
00:20:33 13 desire, to arraign him on that.

00:20:35 14 But perhaps we might start somewhat
00:20:39 15 informally, and I would just invite both sides to bring
00:20:43 16 to my attention what you think is appropriate to discuss
00:20:46 17 here today. And I'll start with Ms. Kocher.

00:20:51 18 You can stay seated in deference to the fact
00:20:54 19 that we continue to wear masks. Just keep that
00:20:57 20 microphone front and center.

00:20:59 21 MS. KOCHER: Thank you, Your Honor. From
00:21:01 22 the government's perspective, we have been discussing
00:21:04 23 potential resolutions with the defendant, and I think
00:21:06 24 together our request of the Court is to set out a status
00:21:11 25 hearing perhaps -- or it may, in fact, be a change of

00:21:15 1 plea hearing -- some 60 days. I apologize for not
00:21:22 2 remembering the month that counsel had recommended to
00:21:25 3 me.

00:21:25 4 MS. BRENNAN: That's correct, Your Honor.
00:21:27 5 We think a status conference which will likely turn into
00:21:29 6 a change of plea hearing sometime in June would be
00:21:32 7 appropriate.

00:21:33 8 THE COURT: Is there any need to arraign
00:21:37 9 your client and take any kind of a plea today on the
00:21:43 10 third count? Is there any time issue? Is there any
00:21:49 11 sensitivity to the fact that it lingers out there?

00:21:53 12 MS. BRENNAN: I don't think so, Your Honor.
00:21:54 13 I believe that once we reach a resolution it will
00:21:57 14 include that count being resolved with any plea
00:22:02 15 agreement.

00:22:02 16 And he would waive any type of speedy --
00:22:06 17 we've discussed his rights under the Speedy Trial Act.
00:22:08 18 He waives any right to a speedy trial on the first two
00:22:14 19 counts and the third count.

00:22:15 20 THE COURT: I will focus on that then for
00:22:17 21 the record and note that what I'm hearing from the
00:22:19 22 defendant, the needs of the case and the time that you
00:22:22 23 require to prepare and negotiate what's anticipated to
00:22:29 24 be a global resolution of the case as to Counts One,
00:22:31 25 Two, and Three is such that the defendant is making a

00:22:35 1 request for a continuance of approximately 60 days.

00:22:39 2 MS. BRENNAN: Yes, Your Honor.

00:22:40 3 THE COURT: And the government endorses that
00:22:42 4 from your perspective and your needs and the public's
00:22:46 5 right to a speedy trial as well?

00:22:48 6 MS. KOCHER: That's correct, Your Honor.

00:22:49 7 THE COURT: Okay. So the time that is
00:22:51 8 ticking away will be excluded, understandably, from
00:22:54 9 Speedy Trial time calculations.

00:22:58 10 And so the request is really for another
00:23:07 11 17.1 conference. It's probably going to turn into a
00:23:13 12 change of plea and a plea?

00:23:15 13 MS. BRENNAN: That's correct, Your Honor.

00:23:17 14 THE COURT: All right. So I have my
00:23:20 15 calendar in front of me. And right now the entire week
00:23:26 16 of June 6 is open. But it's very likely that one or
00:23:34 17 both sides is going to be before the Court the week of
00:23:38 18 the 13th, as I've got five straight days of sentencings.
00:23:41 19 So if it's more convenient for you to come in one of
00:23:46 20 those days, I can make room.

00:23:51 21 I think what I'll do -- well, does anyone
00:23:55 22 want to be heard particularly now?

00:23:59 23 MS. BRENNAN: I do not, Your Honor. I
00:24:01 24 am -- the week of the 6th is fine with me.
00:24:06 25 Additionally, the week of the 13th, I would note I

00:24:09 1 believe I'll be unavailable the 16th and 17th of that
00:24:12 2 week.

00:24:12 3 THE COURT: Do you want to look at 1:30 on
00:24:15 4 Monday, the 6th? How does that work for you, Ms.
00:24:18 5 Kocher?

00:24:19 6 MS. KOCHER: Your Honor, I was hoping for
00:24:20 7 that next week of sentencings that you had mentioned, if
00:24:24 8 counsel for defendant is all right.

00:24:25 9 THE COURT: That next week you're
00:24:28 10 unavailable two days?

00:24:30 11 MS. BRENNAN: Just that Thursday and Friday,
00:24:32 12 Your Honor.

00:24:32 13 THE COURT: Well, just to give you a time
00:24:34 14 certain, I'm going to give you 12:00 noon on the 14th.
00:24:42 15 And we'll caption this a 17.1 conference, 12:00 noon
00:24:56 16 Tuesday, June 14th.

00:24:59 17 Ms. Kocher, good for you as well?

00:25:02 18 MS. KOCHER: Yes, Your Honor. Thank you
00:25:03 19 for that consideration.

00:25:04 20 THE COURT: Certainly.

00:25:06 21 I understand there was an issue with Mr.
00:25:10 22 Fedak complying with a curfew. And I know that's not
00:25:14 23 going to happen again. And there were some mitigating
00:25:17 24 circumstances. But I want to remind that we've got to
00:25:20 25 follow all the rules.

00:25:22 1 Are you in your new apartment today?

00:25:25 2 THE DEFENDANT: Yes, ma'am.

00:25:26 3 THE COURT: How's that going?

00:25:28 4 THE DEFENDANT: It's going, ma'am.

00:25:30 5 THE COURT: Going.

00:25:31 6 And the relationship between you and the

00:25:33 7 third-party custodian -- I see him here. He's giving

00:25:36 8 two thumbs up.

00:25:37 9 THE DEFENDANT: Yes, ma'am. Excellent.

00:25:39 10 It was just the issue with the apartment complex. But

00:25:42 11 we're in there now.

00:25:43 12 THE COURT: And you're working at the

00:25:44 13 hardware store?

00:25:48 14 THE DEFENDANT: Ma'am.

00:25:48 15 THE COURT: Long hours, it sounds like?

00:25:50 16 THE DEFENDANT: Yes, ma'am.

00:25:50 17 THE COURT: But satisfying work, I'm sure.

00:25:52 18 THE DEFENDANT: Yes, ma'am.

00:25:54 19 THE COURT: Well, I don't see any reason to

00:25:57 20 alter the terms and conditions of your pretrial release.

00:26:04 21 Mr. Meeks, from the probation office's

00:26:07 22 perspective is there anything particular that I should

00:26:11 23 know about or address?

00:26:13 24 THE PROBATION OFFICER: No, Your Honor.

00:26:14 25 The conversation we've had with the probation office in

00:26:17 1 the Middle District, other than what you've mentioned
00:26:19 2 about the curfew, I think everything else has resolved
00:26:23 3 itself. I think their concern was if he was not in the
00:26:26 4 apartment by today's hearing, they wanted to make sure
00:26:29 5 that the Court addressed that. But it sounds like they
00:26:32 6 moved his equipment yesterday. So I think he's in
00:26:35 7 compliance with your order now.

00:26:36 8 THE COURT: Okay. And I was pleased to
00:26:39 9 learn that finally we've got the mental health
00:26:42 10 assessment date of April 12th; is that correct?

00:26:46 11 THE DEFENDANT: Yes, ma'am.

00:26:46 12 THE COURT: Good. Good. I think that's
00:26:49 13 very important. And I know it's been difficult to get
00:26:53 14 that appointment. And I'm glad to know it's coming up.

00:27:00 15 From the defendant's perspective, is there
00:27:02 16 anything that you'd like me to consider, counsel?

00:27:05 17 MS. BRENNAN: No, Your Honor.

00:27:06 18 THE COURT: Okay. Ms. Kocher, is there
00:27:08 19 anything else from your side of the room?

00:27:11 20 MS. KOCHER: Just, Your Honor, I want to
00:27:14 21 bring one matter just for the Court's awareness, not
00:27:17 22 action. There were -- there are believed to be a
00:27:22 23 number of firearm accessories and parts and perhaps
00:27:31 24 ammunition as well, none of which I think violate the
00:27:35 25 black and white terms of the orders of release.

00:27:37 1 They're not firearms. If Mr. Fedak were a convicted
00:27:44 2 felon, for instance, the ammunition would be
00:27:46 3 inappropriate.

00:27:47 4 But I bring it up only because -- they are
00:27:50 5 not within his residence, to my knowledge. They're in
00:27:54 6 offsite locations. The government has not taken action
00:28:00 7 on them because of the lack of probable cause of a crime
00:28:04 8 being committed by their presence. But it is of
00:28:07 9 concern, particularly if those storage units would be
00:28:11 10 accessed for furniture or other belongings to furnish
00:28:16 11 the apartment. I just wanted the Court to be aware and
00:28:19 12 perhaps put the third party on notice and even the
00:28:23 13 probation office that some type of -- I don't want to
00:28:26 14 use the word "supervision," but just awareness that
00:28:28 15 those items do exist so that everyone can be cautious
00:28:36 16 and be certain that the terms of the conditions of
00:28:39 17 release are not violated going forward.

00:28:44 18 THE COURT: Well --

00:28:44 19 (Discussion had off the record.)

00:28:51 20 THE COURT: Mr. Meeks, did you know about
00:28:53 21 that?

00:28:54 22 THE PROBATION OFFICER: Your Honor, I think
00:28:55 23 there's been some concerns expressed about possible
00:29:00 24 parts. I don't know if that has something to do with
00:29:04 25 part of the obstruction case about the parts that were

00:29:08 1 located at different areas, that sort of thing. I
00:29:11 2 don't know exactly what are in these storage units. I
00:29:15 3 do understand there may be some personal belongings,
00:29:18 4 furniture, those type things. But the contents of any
00:29:22 5 storage units, I don't know -- I know our office doesn't
00:29:29 6 and I don't know if the Middle District knows exactly
00:29:31 7 what is the content of those units.

00:29:33 8 THE COURT: Thank you.

00:29:34 9 Mr. Chambers, could you come up and stand
00:29:36 10 next to the defense attorney. I'm going to necessarily
00:29:39 11 need to add to your responsibilities that if you are
00:29:45 12 going to be accessing these units, if Mr. Fedak is, that
00:29:50 13 you be with him.

00:29:53 14 MR. CHAMBERS: Yes, ma'am.

00:29:54 15 THE COURT: And that you insure that no
00:29:55 16 firearm parts come back in a desk drawer, even
00:30:00 17 inadvertently. Because that would be a concern if a
00:30:05 18 bullet was in a drawer and it came into your apartment.

00:30:12 19 MR. CHAMBERS: Understood.

00:30:15 20 THE COURT: I appreciate your service.
00:30:16 21 Thank you very much.

00:30:20 22 Anything else?

00:30:22 23 MS. KOCHER: Not for the government.

00:30:25 24 THE COURT: Mr. Meeks, if you could let the
00:30:28 25 probation office in Greensboro know that Mr. Chambers

00:30:32 1 has that additional responsibility of being with Mr.
00:30:35 2 Fedak when these storage units might understandably need
00:30:39 3 to be accessed to bring furniture into the apartment,
00:30:43 4 and his responsibilities have been expanded by the Court
00:30:46 5 in the way I've done today with his agreement.

00:30:52 6 THE PROBATION OFFICER: Yes, Your Honor.

00:30:53 7 THE COURT: I will look forward to seeing
00:30:54 8 everybody at 12:00 noon on Tuesday, June 14th. I don't
00:30:59 9 expect there to be any problems between now and then.
00:31:02 10 If there are, I'll know about it. But things seem to
00:31:05 11 be progressing well.

00:31:07 12 And keep up with the mental health
00:31:10 13 treatment.

00:31:11 14 THE DEFENDANT: Yes, ma'am.

00:31:11 15 THE COURT: Thank you.

16 (Concluded at 10:14 a.m.)

17 - - -

18 C E R T I F I C A T E

19

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled
22 matter.

23

24 /s/ Tracy L. McGurk_____

_____3/30/2023_____

25 Tracy L. McGurk, RMR, CRR

Date